

Question: 10

Topic: Staffing - employment of non-Australian citizens

Written: 4 November 2015

Senator LUDWIG asked:

I refer you to section 22 (8) of the Public Service Act 1999 which says:

"An Agency Head must not engage, as an APS employee, a person who is not an Australian citizen, unless the Agency Head considers it appropriate to do so."

1. Does the department have guidelines or similar to assist Agency Heads to assess when it is appropriate to hire non-Australian citizens? If no, do individual agencies have their own guidelines? If yes to either:
 - i. Please provide a copy.
 - ii. When did they come into effect?
 - iii. Can Agency Heads decide to go against the advice? If yes, under what circumstances?
2. Are Agency Heads required to provide a reason to anyone for hiring non-Australian citizens? If yes:
 - i. Who are they required to report the reason to?
 - ii. Does this reporting happen before or after the hire has been made?
 - iii. Is this reason provided in writing? If no, how is it provided?
 - iv. Can you please provide a list of reasons that have been used since the Federal election in September, 2013.
3. Are there any provisions to over-rule a Head of Agency's decision to hire a non-Australian citizen? If yes:
 - i. Who can over-rule this decision?
 - ii. Under what circumstances can it be over-ruled?
4. How many times has this occurred since the Federal election in September, 2013.

Answer

The Department of the Senate engages Parliamentary Service employees under the *Parliamentary Service Act 1999* and not the *Public Service Act 1999*. If a non-Australian citizen is the preferred applicant for a position, the Director, Human Resource Management checks that the person has the necessary rights to work in Australia. The Clerk of the Senate makes decisions in relation to the engagement of non-Australian citizens. Each decision is made on a case by case basis. There are no guidelines and no requirements to provide reasons for decisions. There are no specific legislative provisions to overrule a decision to engage a non-Australian citizen in the *Parliamentary Service Act 1999*.